

Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 EA-07 IO-13 ISO-00 AGRE-00 CEA-01
CIAE-00 COME-00 DODE-00 FRB-03 H-01 INR-07 INT-05
L-03 LAB-04 NSAE-00 NSC-05 PA-01 EPG-02 AID-05
SS-15 STR-04 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02
OMB-01 FEA-01 AF-10 ARA-06 NEA-10 /134 W
-----032026Z 059750 /70

R 031740Z JUN 77

FM USMISSION GENEVA

TO SECSTATE WASHDC 7939

INFO AMEMBASSY LONDON

AMEMBASSY OTTAWA

AMEMBASSY TOKYO

AMEMBASSY BRUSSELS

AMEMBASSY PARIS

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USEEC/USOECD

E.O. 11652: N/A

TAGS: GATT, ETRD

SUBJECT: GATT WORKING PARTY ON ZENITH CASE

SUMMARY: GATT WP ON ZENITH COUNTERVAILING DUTY CASE MET
AND CONCLUDED ITS WORK EXPEDITIOUSLY. LARGELY BECAUSE
OF WELL ORCHESTRATED PRIOR CONSULTATIONS, JAPAN, EC, AND
OTHERS TOOK EXPECTED POSITIONS BUT IN NON-INFLAMMATORY
WAY. U.S. STATEMENT SEPARATELY RECORDED IN REPORT OF WP.
EARLY CALL OF GATT COUNCIL MEETING EXPECTED FOR CONSIDERATION
AND ADOPTION OF WP REPORT. END SUMMARY.

1. IN THE TWO DAYS PRIOR TO WP MEETING U.S. DELEGATION
MET WITH JAPANESE, EC, CANADIAN, AND YUGOSLAV REPS, WITH
WP CHAIRMAN AND WITH MEMBERS OF GATT SECRETARIAT. US REP
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INDICATED THAT US HOPED TO KEEP WP EXERCISE LOW-KEY AND
NON-INFLAMMATORY TO AVOID FORCING US TO DEFEND GATT
LEGALITY OF COURT DECISION AND SUBSEQUENT SUSPENSION
OF LIQUIDATION, WHICH COULD HAMPER U.S. APPEAL OF CASE
AND MAKE IT MORE DIFFICULT TO OBTAIN LEGISLATION, SHOULD
THAT BE NECESSARY. U.S. REP ALSO STRESSED DESIRE TO
AVOID CONCLUSIONS IN WP REPORT. U.S. APPROACH GENERALLY

WAS ACCEPTED BY OTHER DELS, BUT THERE WAS RESISTANCE BY BOTH EC AND JAPAN TO IDEA OF HAVING WP REPORT BE INTERIM IN NATURE ON GROUNDS THAT EVEN IF WP MEETING APPROPRIATE SOMETIME IN FUTURE ITS TERMS OF REFERENCE WOULD ALMOST CERTAINLY HAVE TO BE DIFFERENT THAN PRESENT ONES. (FURTHERMORE EC MADE IT CLEAR IT COOL TO WP MECHANISM. SEE PARA 3 BELOW.)

2. JAPAN (UKAWA) MADE OPENING STATEMENT IN SESSION OF WP, ASKING FOR WP CONSIDERATION AND ACCEPTANCE OF FOUR POINTS: 1) THAT JAPANESE PRACTICE OF REBATING COMMODITY TAX ON EXPORTS IN FULL ACCORD WITH GATT; 2) THAT IF CUSTOMS COURT DECISION BECOMES FINAL AND COUNTERVAILING DUTIES IMPOSED THIS WOULD BE IN CONTRAVENTION OF PROVISIONS OF GATT AND PRIMA FACIE CASE OF IMPAIRMENT OR NULLIFICATION OF JAPAN'S RIGHTS UNDER GATT; 3) THAT SUSPENSION OF LIQUIDATION ALREADY CAUSING SERIOUS IMPACT ON JAPANESE EXPORTS TO U.S. AND IS VIOLATIVE OF GATT; AND 4) THAT CASE RAISES SERIOUS IMPLICATIONS FOR WORLD TRADE, GATT, AND MTN.

3. EC (LUYTEN) SUPPORTED JAPANESE POINTS BUT NOTED THAT IT WOULD HAVE PREFERRED A DIFFERENT SORT OF GATT PROCEDURE IF IT WERE THE AGGRIEVED PARTY HERE, WITHOUT INDICATING WHAT SORT OF PROCEEDING IT WOULD ASK FOR. (PRIVATELY HE SAID IT WOULD HAVE BEEN ARTICLE XXII.) IN SUPPORTING GATT CONSISTENCY OF JAPANESE COMMODITY TAX EXPORT REBATES, EC REP DREW ANALOGY BY WAY OF CONTRAST TO CONCLUSIONS OF DISC PANEL, BUT DID SO IN UNCLEAR FASHION. EC REP ALSO CALLED SUSPENSION OF LIQUIDATION OA GATT VIOLATION, LIMITED OFFICIAL USE

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BUT TOOK PAINS TO DO SO NOT AS PER SE VIOLATION, BUT IN CONTEXT OF COURT DECISION CONTRARY TO GATT RULES. HE ALSO MADE GENERAL COMMENT THAT U.S. JUDICIAL PROCESSES, WHICH ARE BEYOND CONTROL OF EXECUTIVE BRANCH, ARE POTENTIAL SOURCE OF MAJOR TRADE DISRUPTION.

4. ALL OTHER MEMBERS OF WP SPOKE AND SUPPORTED JAPANESE CONTENTIONS, AT LEAST IN GENERAL WAY. CANADA (STONE), SUPPORTED BY AUSTRALIA (HALL), STATED CURRENT SUSPENSION OF LIQUIDATION HAS DISRUPTED TRADE AND MAY BE ADVERSELY AFFECTING THIRD COUNTRY INTERESTS. LATER MADE CLEAR, INFORMALLY, HE WAS REFERRING TO POSSIBLE TRADE DIVERSION EFFECTS.

5. U.S. (RIVERS) MADE FAIRLY BRIEF STATEMENT, AGREEING WITH CONTENTION CONCERNING SERIOUS TRADE IMPLICATIONS OF COURT DECISION. HE RECITED RELEVANT PROVISION OF NOTE TO ARTICLE XVI IN RESPONSE TO ALLEGATION OF GATT CONSISTENCY OF JAPANESE TAX REBATE PRACTICE. SOME OTHER REPS SEEMED

CONSIDER THIS AS U.S. CONCURRENCE WITH JAPANESE VIEW ON
THE QUESTION. EC CLEARLY RECOGNIZED, HOWEVER, THAT WE

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WERE NEITHER CONCURRING IN NOR CONTESTING JAPANESE
CONTENTION. WITH REGARD TO OTHER ALLEGATIONS CONCERNING
GATT CONSISTENCY OF COURT DECISION AND SUSPENSION OF
LIQUIDATION, AS WELL AS IMPAIRMENT AND NULLIFICATION,
U.S. REP TOOK NOTE OF VIEWS EXPRESSED BUT DECLINED TO
COMMENT THEREON AT THIS TIME.

6. REPORT TO GATT COUNCIL AGREED UPON BY WP ACCURATELY
REFLECTS PROCEEDINGS. JAPANESE STATEMENT SET FORTH
IN SOME DETAIL AND EC VIEWS REPORTED IN SEPARATE PARA-
GRAPH. OTHER VIEWS BRIEFLY SUMMARIZED IN ADDITIONAL
PARAGRAPH FOLLOWED BY PARAGRAPH SUMMARIZING AGREEMENT OF
ALL DELS OTHER THAN U.S. WITH JAPANESE CONTENTIONS.
U.S. STATEMENT THEN SUMMARIZED SEPARATELY, (TEXT FOLLOWS
AT END OF THIS MESSAGE) FOLLOWED BY BRIEF PARAGRAPH RE-
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FLECTING UNANIMITY OF WP ON SERIOUS IMPLICATIONS OF COURT
DECISION AND CONCLUDING PARAGRAPH ASKING REPORT
TO BE TRANSMITTED TO COUNCIL URGENTLY FOR EXPEDITIOUS
COUNCIL ACTION.

7. JAPAN REQUESTED, AND WP AGREED, THAT WP REPORT NOT
BE CLASSIFIED. JAPAN EXPECTED TO CALL FOR EARLY MEETING
OF GATT COUNCIL TO CONSIDER AND ADOPT REPORT. THIS WILL
PROBABLY BE HELD JUNE 16. WE EXPECT JAPAN, EC, AND OTHERS
WILL USE OCCASION TO FORCEFULLY REITERATE VIEWS ON MATTER.
US REP WILL NEED GUIDANCE ON HOW TO HANDLE MEETING.

8. THE TEXT OF PARA ON REPORT SUMMARIZING U.S. STATE-
MENT IS AS FOLLOWS:

BEGIN TEXT

THE UNITED STATES REPRESENTATIVE TOOK NOTE OF THE VIEWS
EXPRESSED BY THE OTHER MEMBERS OF THE WORKING PARTY. HE IN-
FORMED THE OTHER MEMBERS THAT THE DECISION WAS BEING APPEALED
EXPEDITIOUSLY BY HIS ADMINISTRATION AND THAT A DECISION OF THE
UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS WAS EXPECTED
SOMETIME BETWEEN MID-SUMMER AND EARLY FALL. WITH RESPECT TO THE
VIEW EXPRESSED THAT THE EXPORT REBATE OR REMISSION OF JAPANESE
COMMODITY TAXES WAS CONSISTENT WITH THE GATT, THE UNITED STATES
REPRESENTATIVE NOTED THAT THE NOTE TO ARTICLE XVI SAID "THE
EXEMPTION OF AN EXPORTED PRODUCT FROM DUTIES OR TAXES BORNE BY
THE LIKE PRODUCT WHEN DESTINED FOR DOMESTIC CONSUMPTION,
OR THE REMISSION OF SUCH DUTIES OR TAXES IN AMOUNTS NOT IN
EXCESS OF THOSE WHICH HAVE ACCURED, SHALL NOT BE DEEMED TO BE
A SUBSIDY". HE NOTED BUT DECLINED TO COMMENT ON THE VIEW THAT
THE SUSPENSION OF LIQUIDATION ON ENTRIES OF JAPANESE ELECTRONIC
PRODUCTS CURRENTLY IN EFFECT AND ANY EVENTUAL ASSESSMENT OF
COUNTERVAILING DUTIES WAS A NULLIFICATION OR IMPAIRMENT OF
BENEFITS ACCRUING UNDER THE GENERAL AGREEMENT. HE ALSO NOTED
THE VIEW THAT THE SUSPENSION OF LIQUIDATION AND ANY EVENTUAL
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IMPOSITION OF COUNTERVAILING DUTIES WAS A VIOLATION OF THE
GENERAL AGREEMENT, BUT STATED THAT IT WOULD BE INAPPROPRIATE
FOR HIM TO COMMENT THEREON AT THIS TIME. END TEXT SORENSON

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